IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

WP(C).No. 31463 of 2006(U)

OS.56/2006 of MUNSIFF COURT, NORTH PARAVUR
.....

PETITIONER:

E.J.JOHNSON, ERALIL,
PARAVOOTHARA MURI, PARAVUR VILLAGE.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR

RESPONDENT:

SREELATHA RAJEEV, SREENILAYAM,
MANNAM, N.PARAVUR.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE REPORT SUBMITTED BY ADVOCATE COMMISSIONER DATED 1.4.06.**

EXT.P2 **TRUE COPY OF THE APPLICATION I.A.847/06 IN OS 56/06 OF MUNSIFF COURT, NORTH PARAVUR DATED 6.4.06.**

EXT.P3 **TRUE COPY OF MEMO CONTIANING PANEL OF MECHANICS DATED 6.4.06**

EXT.P4 **TRUE COPY OF THE ORDER OF THE MUNSIFF'S COURT, NORTH PARAVUR IN IA 847/06 IN OS 56/06.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 31463 OF 2006

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Dated this the 22nd day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, North Paravur in I.A.847/06 in O.S.56/06. This is for an issuance of a Commission to find out whether there is any mechanical defect of the Tempo Truck involved in the suit and whether it is in a running condition and what must be the approximate amount necessary to get it repaired and other particulars as sought for by the plaintiff. The Court below dismissed the application on the ground that though the prayer was allowed at an earlier stage the Commissioner could not complete the work for non-availability of a mechanic. The Court found fault with the plaintiff for not getting the assistance of a mechanic at the relevant point of time. The very fact that the Court itself found it necessary to have a Commission issued for the said purpose indicates the necessity and relevancy of the same. The only fault with the plaintiff is that he did not provide a mechanic at the earlier

occasion. Here, though the respondent is served he has chosen to remain absent as well. Therefore, considering the nature of contentions raised and the factum of necessity of examination by the Commissioner with the assistance of a mechanic I feel the Court below should have allowed the application. Therefore, the I.A. 847/06 is allowed and the Court below is directed to select the mechanic to accompany the Commissioner either from the list supplied by the plaintiff or after hearing the defendant in the matter.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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